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Montana Constitutional Convention Occasional Papers

Montana Territory Organic Act

Prepared By:
Montana Constitutional Convention Commission

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MONTANA CONSTITUTIONAL CONVENTION

1971-1972

MONTANA TERRITORIAL ORGANIC ACT

CONSTITUTIONAL CONVENTION OCCASIONAL PAPER NO. 3

PREPARED BY

MONTANA CONSTITUTIONAL CONVENTION COMMISSION

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CONSTITUTIONAL CONVENTION COMMISSION

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PREFACE

The delegates to the 1971-1972 Montana Constitutional Convention will need historical, legal and comparative information about the Montana Constitution. Recognizing this need, the 1971 Legislative Assembly created the Constitutional Convention Commission and directed it to assemble and prepare essential information for the onvention.

To fulfill this responsibility, the Constitutional Convention Commission is preparing a series of research reports under the general title of Constitutional Convention Studies. In addition to the series of research reports the Commission has authorized the reprinting of certain documents for the use of Convention delegates.

This occasional paper republishes the Organic Act that created in 1864 the Territory of Montana from parts of Idaho territory. This act approved by Congress May 26, 1864, the first "organic" or "fundamental" law of Montana, provided the structure of Montana territorial government from 1864 to 1889, including provisions for the executive, legislative and judicial branches of the territorial government and local government.

Margery H. Brown, a member of the Constitutional Convention Commission wrote in the Autumn, 1970, issue of Montana, the Magazine of Western History the following description of territorial government under the Organic Act:

> Details of [Territorial] government were set down with brevity in the 1864 Organic Act creating the Territory of Montana, satisfying at the time a Bannack and Virginia City constituency whose paramount interest was that Montana be separated from the ungovernable expanse of Idaho Territory (encompassing, in 1863 and 1864, all of present-day Idaho, Wyoming, and Montana). Congressional amendments were added to the Organic Act in 1867, and through the years, federal legislation common to all territories and acts relating specifically to Montana modified both structure and procedures of the territorial government.
>
> The result was a pattern of government originally designed to be transitional, similar to that of other western territories in the post-Civil War years, and always subject to Congressional control. A combination of elected and appointed officials formed policy and administered the affairs of the territory. A governor, secretary, chief justice,

and two associate justices were the major appointments made by the President--appointments generally given as a reward for party service elsewhere. Residents of the territory elected members of a two-house legislature and a delegate to the United States House of Representatives. The delegate could not vote, but he could debate in the House and serve on its committees.

The three justices constituted the territorial supreme court, and each presided over one of the territory's judicial districts. As a result, when the supreme court entertained an appeal from a district court decision, one of the judges had usually tried the case at the lower level. Change in the system came late in the period when Congress provided in 1886 for the appointment of a fourth justice and the disqualification of a judge who had tried a case in district court to sit on the supreme court on its appeal.

The greatest grant of home rule to territorial Montana was found in the Organic Act's provisions for legislative power, which extended to all rightful subjects of legislation consistent with the Constitution of the United States, with prohibitions placed only on interfering with disposal of public lands, taxing property of the United States, and distinguishing between residents and non-residents in tax assessment.

In practice no territorial law could be inconsistent with federal law and Congress could (and did) add other specific restrictions to territorial lawmaking. Additionally, all laws passed by the territorial legislature had to be submitted to Congress, which had the power of annulment, and there was no recourse from that action. Periodically, Congress also altered the composition of the territorial legislature, curtailed its expenses, and applied what have remained perpetual limitations on the length and frequency of legislative sessions.

Initially, the Organic Act provided for a legislature which could meet annually for forty days after the initial session, which could extend to sixty days, and Montana's first territorial Legislative Assembly took full advantage of the privilege in a session convened at Bannack December 12, 1864, and adjourned February 9, 1865.

The upper house, the Council, was at first assigned a membership of seven, elected for two-year terms,

and membership of the House of Representatives was set at thirteen, elected for single year terms. The Legislative Assembly was originally authorized by the Organic Act to increase Council membership to thirteen and that of the House to twenty-six, but in 1878, Congress limited all territorial councils to twelve members, and lower house membership to twenty-four.

Both houses of the legislature were apportioned according to population throughout the territorial period. The governor was required to make the initial apportionment and to arrange for the election and time and place of convening for the first Legislative Assembly; afterward these matters were to be determined by territorial law. In 1868 Congress stipulated that territorial legislatures were to meet biennially, and an act of 1869 provided that members of both houses should be elected for terms of two years. The biennial sessions were limited to forty days in 1873, but this limitation was extended to sixty days in 1880 (and re-enacted into state constitutional law in 1889).

During the territorial period, federal appropriations covered the salaries of officers appointed by the President, the expenses of their offices, and per diem, mileage, and limited expenses for the legislature. Federal law also specified the composition and compensation of a small legislative staff and set definite bounds on expenditures by the legislature ($3,750 in 1882) for printing bills, journals and laws.

Although the legislative power of the territory was explicitly vested by the Organic Act in the appointed governor in addition to the legislature, executive participation in law-making was much the same in territorial days as under statehood, when the distribution of powers was more sharply drawn between the legislative, executive, and judicial departments. The territorial governor signed bills passed by both houses, but if he did not act on them within three days, they could become law without his signature. He posssessed the veto, but his veto could be overridden by a two-thirds vote of both houses.

Although the Organic Act no longer provides for the structure of Montana Government, section 1 still contains the basic legal description of the boundaries of the State of Montana.

The Enabling Act providing statehood for Montana in 1889 provided that the inhabitants of the area ". . . now constituting the territor[y] of . . . Montana . . . as at present described may become the state of . . . Montana . . ."

In Article I, Section 1 of the Montana Constitution, the delegates to the 1889 Convention attempted to describe the boundaries of the state as they were described in the Organic Act. However, the section in the Montana Constitution as proposed by the delegates and adopted by the people incorrectly quotes from the Organic Act. The language from the Organic Act is set out below. The material deleted in Section 1 of Article I of the Montana Constitution is indicated by underlining.

> That all that part of the territory of the United States included within the limits, to-wit: Commencing at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington with the forty-fifth degree of north latitude; thence due west on said forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington; thence due south along said thirty-fourth degree of longitude to its intersection with the forty-fourth degree and thirty minutes of north latitude; thence due west along said forty-fourth degree and thirty minutes of north latitude to a point formed by its intersection with the crest of the Rocky mountains; thence following the crest of the Rocky mountains northward till its intersection with the Bitter Root mountains; thence northward along the crest of said Bitter Root mountains to its intersection with the thirty-ninth degree of longitude west from Washington; thence along said thirty-ninth degree of longitude northward to the boundary line of the British Possessions; thence eastward along said boundary line to the twenty-seventh degree of longitude west from Washington; thence southward along said twenty-seventh degree of longitude to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the territory of Montana... (Section 1, Organic Act of the Territory Montana, 14 U.S. Stat. 426).

The boundary of Montana is set by federal law, the Organic Act and Enabling Act, and cannot be changed by state action.

The Constitutional Convention of 1889 brought to an end twenty-five years of territorial government under the Organic Act. Recognizing that a thorough understanding of Montana territorial government that preceded state government is necessary to understand the Constitution of 1889, the Constitutional Convention Commission respectfully submits this reprint of the Organic Act to the people of Montana and their delegates to the 1971-1972 Montana Constitutional Convention.

ALEXANDER BLEWETT

CHAIRMAN

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. . . .

United States Constitution
Article IV, Section 3(2)

ORGANIC ACT

OF THE

TERRITORY OF MONTANA

An Act to provide a temporary government for the territory of Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That all that part of the territory of the United States included within the limits, to-wit: Commencing at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington with the forty-fifth degree of north latitude; thence due west on said forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington; thence due south along said thirty-fourth degree of longitude to its intersection with the forty-fourth degree and thirty minutes of north latitude; thence due west along said forty-fourth degree and thirty minutes of north latitude to a point formed by its intersection with the crest of the Rocky mountains; thence following the crest of the Rocky mountains northward till its intersection with the Bitter Root mountains; thence northward along the crest of said Bitter Root mountains to its intersection with the thirty-ninth degree of longitude west from Washington; thence along said thirty-ninth degree of longitude northward to the boundary line of the British Possessions; thence eastward along said boundary line to the twenty-seventh degree of longitude west from Washington; thence southward along said twenty-seventh degree of longitude to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the territory of Montana: Provided, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory or changing its boundaries in such manner and at such time as congress shall deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States: Provided further, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory so long as such rights remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribes, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the territory of Montana, until said tribe shall signify their assent to the president of the United States to be included within said territory, or to affect the authority of the government of the United States to make any regulations respecting

such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the government to make if this act had never passed.

§ 2. And be it further enacted, That the executive power and authority in and over said territory of Montana, shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory and shall be commander-in-chief of the militia and superintendent of Indian affairs thereof. He may grant pardons and respites for offenses against the laws of said territory and reprieve for offenses against the laws of the United States, until the decision of the president of the United States can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of said territory, and shall take care that the laws be faithfully executed.

References

Ogle v. Town of Ronan, 112 M 394, 396, 117 P 2d 257.

§ 3. And be it further enacted, That there shall be a secretary of said territory, who shall reside therein and hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly, within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence, semi-annually, on the first days of January and July in each year, to the president of the United States, and two copies of the laws to the president of the senate and to the speaker of the house of representatives, for the use of congress. And in case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor during such vacancy or absence, or until another governor shall be duly appointed and qualified to fill such vacancy.

§ 4. And be it further enacted, That the legislative power and authority of the said territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of seven members having the qualifications of voters, as hereinafter prescribed, whose term of office shall continue two years. The house of representatives shall, at its first session, consist of thirteen members, possessing the same qualifications as prescribed for the members of the council, and whose term of service shall continue one year. The number of representatives may be increased by the legislative assembly, from time to time, to twenty-six, in proportion to the increase of qualified voters; and the council, in like manner, to thirteen. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts for the election of the council and representatives, giving to each section of the territory representation in the ratio of its qual-

fied voters as nearly as may be. And the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district, or county, or counties for which they may be elected, respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the territory to be taken by such persons and in such mode as the governor shall designate and appoint, and the person so appointed shall receive a reasonable compensation therefore. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election and the returns thereof, as the governor shall appoint and direct; and he shall at the same time declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The persons having the highest number of legal votes in each of said council districts, respectively, for members of the council, shall be declared by the governor to be duly elected to the council; and the persons having the highest number of legal votes for the house of representatives in each of said representative districts, respectively, shall be declared by the governor to be duly elected members of said house: Provided, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the legislative assembly, the governor shall order a new election. And the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor shall appoint; but thereafter the time, place and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of commencement of the regular sessions of the legislative assembly: Provided, That no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days.

§ 5. And be it further enacted, That all citizens of the United States, and those who have declared their intentions to become such, and who are otherwise described and qualified under the fifth section of the act of congress providing for a temporary government for the territory of Idaho, approved March third, eighteen hundred and sixty-three, shall be entitled to vote at said first election, and shall be eligible to any office within the said territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly.

§ 6. And be it further enacted, That the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. Every bill which shall have passed the council and house of representatives of the said territory shall, before it becomes a law, be presented to the governor of the territory. If he approve, he shall sign

it, but if not he shall return it, with his objections, to the house in which it originated, who shall enter the objections at large upon their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of such houses shall be determined by yeas and nays, to be entered on the journals of each house, respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the assembly by adjournment, prevent its return, in which case it shall not be a law: Provided, That whereas slavery is prohibited in said territory by act of congress of June nineteenth, eighteen hundred and sixty-two, nothing herein contained shall be construed to authorize or permit its existence therein.

§ 7. And be it further enacted, That all township, district and county officers, not herein otherwise provided for, shall be appointed or elected as the case may be, in such manner as shall be provided by the governor and legislative assembly of the territory of Montana. The governor shall nominate, and, by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for, and in the first instance the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly, and shall lay off the necessary districts for the members of the council and house of representatives and all other officers.

§ 8. And be it further enacted, That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly. And no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly; or shall hold any office under the government of said territory.

§ 9. And be it further enacted, That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually; and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of probate courts and of justices of the peace shall be limited by law: Provided, That

justices of the peace shall not have jurisdiction of any matter in controversy when the title of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts respectively shall possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exceptions, and appeals shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law. The supreme court, or the justices thereof, shall appoint its own clerk; and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said supreme court shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witnesses, shall exceed one thousand dollars, except that a writ of error or appeal shall be allowed to the supreme court of the United States from the decision of the said supreme court created by this act, or any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writs of habeas corpus involving the question of personal freedom. And each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States, as is vested in the district and circuit courts of the United States; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws; and writs of error and appeal in all such cases, shall be made to the supreme court of said territory the same as in other cases. The said clerks shall receive, in all such cases, the same fees which the clerks of the district courts of Washington territory now receive for similar services.

§ 10. And be it further enacted, That there shall be appointed an attorney for said territory, who shall continue in office four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States, and who shall receive the same fees and salary as the attorney of the United States for the present territory of Washington. There shall also be a marshal for the territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States. He shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the marshal of the district court of the United States for the present territory of Washington, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services. There shall also be appointed by the President of the United States, by and with the advice and consent of the senate, a surveyor general of said territory, who shall locate his office at such place as the

secretary of the interior shall from time to time direct, and whose duties, powers, obligations, responsibilities, compensation, and allowances for clerk hire, office rent, fuel, and incidental expenses, shall be the same as those of the surveyor general of New Mexico, under the direction of the secretary of the interior, and such instructions as he may from time to time deem it advisable to give.

§ 11. And be it further enacted, That the governor, secretary, chief justice, and associate justices, attorney, and marshal, shall be appointed by the president of the United States, by and with the advice and consent of the senate. The governor and secretary to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation before the district judge or some justice of the peace in the limits of said territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and associate justices, and all civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory who may be duly commissioned and qualified, or before the chief justice or some associate justice of the supreme court of the United States, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and afterwards the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. And any person who has heretofore been appointed chief justice or associate justice of the territory of Idaho, who has not yet taken the oath of office, as prescribed by the act organizing said territory, may take said oath or affirmation before the chief justice or some associate justice of the supreme court of the United States. The governor shall receive an annual salary of two thousand five hundred dollars; the chief justice and associate justices shall receive an annual salary of two thousand five hundred dollars; the secretary shall receive an annual salary of two thousand dollars. The said salaries shall be paid quarter-yearly from the dates of the respective appointments at the treasury of the United States; but no payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the legislative assembly shall be entitled to receive four dollars each, per day, during their attendance at the sessions thereof, and four dollars each for every twenty miles travel in going to and returning from said sessions, estimated according to the nearest usually travelled routes; an additional allowance of four dollars per day shall be paid to the presiding officer of each house for each day he shall so preside. And a chief clerk, one assistant clerk, one engrossing and one enrolling clerk, a sergeant-at-arms, and door-keeper may be chosen for each house; and the chief clerk shall receive four dollars per day, and

the said other officers three dollars per day during the session of the legislative assembly; but no other officers shall be paid by the United States; Provided, That there shall be but one session of the legislative assembly annually, unless on an extraordinary occasion the governor shall think proper to call the legislative assembly together. There shall be appropriated annually the usual sum, to be expended by the governor, to defray the contingent expenses of the territory, including the salary of the clerk of the executive department. And there shall also be appropriated annually a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses. And the governor and secretary of the territory shall, in the disbursement of all moneys entrusted to them, be governed solely by the instructions of the secretary of the treasury of the United States, and shall semi-annually account to the said secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditure shall be made by said legislative assembly for objects not specially authorized by the acts of congress making the appropriations, nor beyond the sums thus appropriated for such objects.

§ 12. And be it further enacted, That the legislative assembly of the territory of Montana shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for said territory at such place as they may deem eligible; Provided, That the seat of government fixed by the governor and legislative assembly shall not be at any time changed except by an act of the said assembly duly passed, and which shall be approved after due notice, at the first general election thereafter, by a majority of the legal votes cast on that question.

§ 13. And be it further enacted, That a delegate to the house of representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States to the said house of representatives; but the delegate first elected shall hold his seat only during the term of the congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and at all subsequent elections, the time and places, and manner of holding elections, shall be prescribed by law. The person having the greatest number of legal votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly. That the constitution and all the laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Montana territory as elsewhere within the United States.

§ 14. And be it further enacted, That when the lands in said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said territory, and in the states and territories hereafter to be erected out of the same.

References

Cited or applied in Texas Pacific Coal & Oil Co. v. State, 125 M 258, 234 P 2d 452, 453.

§ 15. And be it futher enacted, That, until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding courts in the several counties or sub-divisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

§ 16. And be it further enacted, That all officers to be appointed by the president of the United States, by and with the advice and consent of the senate, for the territory of Montana, who, by virtue of the provisions of any law now existing, or which may be enacted by congress, are required to give security for moneys that may be entrusted to them for disbursement, shall give such security at such time and in such manner as the secretary of the treasury may prescribe.

§ 17. And be it further enacted, That all treaties, laws, and other engagements made by the government of the United States with the Indian tribes inhabiting the territory embraced within the provisions of this act, shall be faithfully and rigidly observed, anything contained in this act to the contrary notwithstanding; and that the existing agencies and superintendencies of said Indians be continued, with the same power and duties which are now prescribed by law, except that the president of the United States may, at his discretion, change the location of the office of said agencies or superintendents.

§ 18. And be it further enacted, That until congress shall otherwise direct, all that part of the territory of Idaho included within the following boundaries, to-wit: Commencing at a point formed by the intersection of the thirty-third degree of longitude west from Washington with the forty-first degree of north latitude; thence along said thirty-third degree of longitude to the crest of the Rocky mountains; thence northward along the said crest of the Rocky mountains to its intersection with the fourty-fourth degree and thirty minutes of north latitude; thence eastward along said forty-fourth degree thirty minutes north latitude to the thirty-fourth degree of longitude west from Washington; thence northward along said thirty-fourth degree of longitude to its intersection with the forty-fifth degree north latitude; thence eastward along said forty-fifth degree of

north latitude to its intersection with the twenty-seventh degree of longitude west from Washington; thence south along said twenty-seventh degree of longitude west from Washington to the forty-first degree north latitude; thence west along said forty first degree north latitude to the place of beginning, shall be, and is hereby, incorporated temporarily into, and made part of, the territory of Dakota. [Approved May 26, 1861, 13 Stat. 85.]

AN ACT amendatory of "An Act to provide a temporary government for the territory of Montana," approved May 26, 1864.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the legislative assemblies of the several territories of the United States shall not, after the passage of this act, grant private charters or special privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits.

§ 2. And be it further enacted, That the probate courts of the territory of Montana, in their respective counties, in addition to their probate jurisdiction, are hereby authorized to hear and determine civil causes wherein the damage or debt claimed does not exceed five hundred dollars, and such criminal cases arising under the laws of the territory as do not require the intervention of a grand jury; Provided, That they shall not have jurisdiction in any matter in controversy when the title or right to the peaceable possession of land may be in dispute, or chancery, or divorce causes; And provided further, That in all cases an appeal may be taken from any order, judgment, or decree of said probate court to the district court.

§ 3. And be it further enacted, That the chief justice and associate justices of said territory and the territory of Idaho shall each receive an annual salary of thirty-five hundred dollars.

§ 4. And be it further enacted, That the judges of the supreme court of said territory, or a majority of them, shall, when assembled at the seat of government of said territory, define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and shall also fix and appoint the times and places for holding the courts in the several counties or sub-divisions in each of said judicial districts, and alter the times and places of holding the courts as to them shall seem proper and convenient, but not less than two terms shall be held at each place of holding court each year.

§ 5. And be it further enacted, That for the purpose of reviving the legislative functions of the territory of Montana, which have been adjudged therein to have lapsed, the governor of said territory be, and he is hereby, authorized, on or before the first day of July, eighteen hundred and sixty-seven, to divide said territory into legislative districts for the election of members of the council and house of representatives, and to apportion among said districts the number of members of the legislative assembly provided for in the organic act of said territory, and the election of said

members of the legislative assembly shall be held at such time and shall be conducted in the manner prescribed by the legislative assembly of said territory at the session thereof, begun and holden at the city of Bannack, in eighteen hundred and sixty four and eighteen hundred and sixty-five, and the qualifications of voters shall be the same as that prescribed by said organic act, saving and excepting the distinction therein made on account of race or color, and the legislative assembly, so elected, shall convene at the time prescribed by said legislative assembly at the session last aforesaid. The apportionment provided for in this section shall be based upon such an enumeration of the qualified electors of the said several legislative districts as shall appear from the election returns in the office of the secretary of said territory, and from such other sources of information as will enable the governor, without taking a new census, to make an apportionment which shall fairly represent the people of the several districts in both houses of the legislative assembly, but the legislature may at any time change the legislative districts of the territory as fixed by the governor.

§ 6. And be it further enacted, That all acts passed at the two sessions of the so-called legislative assembly of the territory of Montana, held in eighteen hundred and sixty-six, are hereby disapproved and declared null and void, except such acts as the legislative assembly herein authorized to be elected, shall by special act, in each case, re-enact: Provided, however, That in all the claims of vested rights thereunder, the party claiming the same shall not, by reason of anything in this section contained, be precluded from making and testing said claim in the courts of said territory: And provided further, That no legislation or pretended legislation in said territory since the adjournment of the first legislative assembly shall be deemed valid until the election of the legislative assembly herein provided for shall take place.

§ 7. And be it further enacted, That from and after the first day of April next, the salary of each of the judges of the several supreme courts in each of the organized territories (except Montana and Idaho) shall be two thousand five hundred dollars.

§ 8. And be it further enacted, That all acts and parts of acts inconsistent with this act are hereby repealed. [Approved March 2, 1867, 14 Stat. 426.]

References

Valley County v. Thomas, 109 M 345, 378, 97 P 2d 345.

Constitutional Convention Occasional Papers